

Copy to Parkin, Partee, Matta, Prelich by airtel 4/14/87
Pls review & comment. Changes in format
needed because DOE unit is missing permit
until summer at earliest. This
Decree is largely a reformatting of existing orders.

Judge Rothstein

Munier

LDWSF

12.3.5501

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

and

STATE OF WASHINGTON, DEPARTMENT
OF ECOLOGY,

Plaintiff in
Intervention,

v.

MARINE POWER AND EQUIPMENT COMPANY
INC., and WFI INDUSTRIES, INC.,

Defendants.

NO. C85-382R

CONSENT DECREE

WHEREAS, the United States of America ("United States"), on
behalf of the Administrator of the United States Environmental
Protection Agency ("EPA"), filed a Complaint in this case on
March 8, 1985, under Section 301(a) of the Clean Water Act, 33
U.S.C. § 1311(a), and the Refuse Act, 33 U.S.C. § 407, alleging
that the defendants illegally discharged pollutants and refuse

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CONSENT DECREE - 1
(0499F)

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1 from ship repair facilities into the Duwamish River and Lake
2 Union in Seattle, Washington; and

3 WHEREAS, the State of Washington, Department of Ecology
4 ("Ecology"), as plaintiff in intervention, has alleged that
5 defendants have violated Section 301(a) of the Clean Water Act,
6 33 U.S.C. § 1311(a), the Refuse Act, 33 U.S.C. § 407, and RCW
7 90.48.080 and 90.48.160; and

8 WHEREAS, the United States and the State of Washington and
9 the defendants agree that the defendants shall not discharge
10 without a permit into the Duwamish River and Lake Union spent
11 sandblasting abrasives, chipped paint, rust and other debris and
12 shall conduct all of their operations at their Duwamish River and
13 Lake Union facilities in compliance with the Clean Water Act and
14 the Refuse Act; and

15 WHEREAS, defendants have applied to Ecology for the required
16 National Pollutant Discharge Elimination System ("NPDES") ^{permit}; and

17 WHEREAS, both plaintiffs and the defendants recognize that
18 the public interest is best served by the entry of this Consent
19 Decree and this settlement avoids difficult and expensive and
20 litigation; and

21 WHEREAS, the plaintiffs and the defendants, by their
22 undersigned representatives, have each agreed to the making of
23 this Partial Consent Decree:

24 NOW, THEREFORE, it is Ordered as follows:

25 *and dispose of*
26 ~~WHEREAS, the defendants have agreed to remove sandblasting~~
~~abrasives, chipped paint, rust and other debris which has~~
~~accumulated beneath their~~
~~drydocks at the Duwamish River~~
~~and Lake Union facilities.~~
WHEREAS, the defendants agree to remove sandblasting
abrasives, chipped paint, rust and other debris which has
accumulated beneath their
drydocks at the Duwamish River
and Lake Union facilities.

I

JURISDICTION AND SIGNATORIES

Each signatory submits itself to the jurisdiction of the Court for all matters relating to this Partial Consent Decree and certifies that he or she is fully authorized to enter into the terms and conditions of this Partial Consent Decree and to legally bind the party he or she represents to this document.

II

CESSATION OF DISCHARGES

Defendants shall not, unless authorized by NPDES permit, discharge pollutants from the following sources at their Duwamish River facility at 6701 Fox Avenue and their Lake Union facility at 1441 North Northlake Way into the Duwamish River and Lake Union:

1. the submersible docks at the Duwamish River and Lake Union facilities;
2. the water caster at the Duwamish River facility;
3. the water washer at the Duwamish River facility;
4. the synchrolift dock at the Duwamish River facility; and
5. all pipes and hoses which discharge pollutants into the Duwamish River or Lake Union.

Discharges from the submersible dry docks, the water caster, the synchrolift and the water washer will be prevented or minimized by the use of the following Best Management Practices ("BMPs"):

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1. Control of Large Solid Materials. Scrap metal, wood and plastic, miscellaneous trash such as paper and glass, industrial scrap and waste such as insulation, welding rods, packaging, etc., that would float or otherwise be released to the water shall be removed from the drydock floor prior to flooding or sinking;
2. Control of Blasting Debris. Cleanup of spent paint and abrasive shall be undertaken as part of the repair or production activities to prevent their entry into drainage systems. Mechanical cleanup may be accomplished by mechanical sweepers, front loaders, vacuum cleaners or other innovative equipment. Manual methods include the use of shovels and brooms. Innovations and procedures which improve the effectiveness of clean-up operations shall be adapted where they are feasible and can be demonstrated as preventing the discharge of solids. Those portions of the drydock floor which are reasonably accessible shall be scraped or broomed clean using shovels, mechanical loaders, mechanical sweepers, vacuum cleaners or brooms to remove spent abrasive prior to flooding.

1 After a vessel has been removed from the drydock and
2 the dock has been raised for repositioning of the keel
3 and bilge blocks, the remaining areas of the floor
4 which were previously inaccessible shall be cleaned by
5 scraping or broom cleaning prior to the introduction
6 of another vessel into the drydock.
7

8 3. Oil, Grease, and Fuel Spills. During the drydocked
9 period, oil, grease, or fuel spills shall be prevented
10 from reaching drainage systems and from discharge with
11 drainage water. Cleanup shall be carried out promptly
12 after an oil or grease spill is detected.
13

14 4. Paint and Solvent Spills. Paint and solvent spills
15 shall be treated as oil spills and segregated from
16 discharge water. Spills shall be contained until
17 cleanup is complete. Mixing of paint shall be carried
18 out in locations and under conditions such that spills
19 shall be prevented from entering drainage systems. and
20 discharging with the drainage water.
21

22 5. Segregation of Waste Water Flows in Drydocks. The
23 various process wastewater streams shall be segregated
24 from sanitary wastes.
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6. Contact Between Water and Debris. Shipboard cooling and process water shall be directed so as to minimize contact with spent abrasive and paint and other debris. Contact of spent abrasive and paint by water can be reduced by proper segregation and control of wastewater streams. When debris is present, hosing of the dock should be minimized. When hosing is used as a removal method, appropriate methods should be incorporated to prevent accumulation of debris in drainage systems and to prevent its discharge with wastewater.

7. Maintenance of Hoses, Soil Chutes, and Piping. Leaking connections, valves, pipes, hoses, and soil chutes carrying either water or wastewater shall be replaced or repaired immediately. Soil chute and hose connections to the vessel and to receiving lines or containers shall be tightly connected and as leak-free as practicable.

8. Storage and Disposal of Spent Sandblasting Debris. Spent sandblasting debris shall be stored in a manner that will prevent the entry of the debris (or leachate from the debris) into the Duwamish River or Lake Union. Prior to disposal, the debris shall be approved

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1 for disposal by WDOE or the Seattle-King County
2 Department of Public Health under the appropriate
3 regulations.
4

- 5 9. Stormwater Management Runoff, Storm Drains and Bilge
6 Water. The yard area shall be cleaned on a regular
7 basis (and before water caster operation) to minimize
8 the possibility that runoff will carry sandblasting
9 material or other debris into receiving waters or storm
10 drains. Cleanup of areas contributing runoff shall
11 consist of mechanical or manual methods to sweep up and
12 collect the debris. Collected sandblasting debris
13 shall be stored with the spent grit.
14

15 The sediment traps in the storm drainage systems shall
16 be inspected on a frequent basis and cleaned as
17 necessary to ensure collection of solids entering the
18 drainage system.
19

20 All bilge water discharges shall not exceed an oil and
21 grease concentration of ten (10) milligrams per liter
22 and shall not cause any visible sheen in the receiving
23 waters.
24

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III

EFFECT OF NPDES PERMIT

This Consent Decree shall not be construed to constitute an NPDES permit. ~~The conditions BMPs~~ Any BMPs contained in an NPDES permit obtained by the defendants ~~which are in direct conflict with BMPs contained in this Consent Decree~~ shall control, EPA and Ecology may enforce the provisions of the NPDES permit, notwithstanding any provision of this Consent Decree.

IV

REMOVAL AND DISPOSAL OF POLLUTANTS

The defendants shall remove from beneath and near the Fox Avenue and Lake Union facilities the spent sandblasting debris and any other pollutants which emanated from defendants' facilities ^("debris") and are resting on ^{the} bottoms of Lake Union and the Duwamish River. The approximate depth and areal extent of this accumulated debris is shown in Exhibits 1 and 2 to this Consent Decree. Removal procedures shall be designed to minimize contact of the debris with the surrounding water. Removal and disposal shall be carried out in a manner consistent with all applicable local, state, and federal laws and regulations. The work shall be completed according to the following schedule:

A. No later than thirty (30) days after entry of the Consent Decree, defendants shall establish, based on soundings and/or other methods, the physical extent of the deposits ^{of debris} at both the Lake Union and Duwamish sites. Defendants shall provide

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1 charts of both the Fox Avenue and Duwamish facilities showing the
2 areas covered by the sandblasting debris to a depth of one (1)
3 inch or more and indicating topographically the probable depths
4 throughout such areas.

5 B. Not later than sixty (60) days after entry of the
6 Consent Decree, defendants shall establish, based on corings
7 and/or other methods, the physical and chemical characteristics
8 of the ~~deposited materials~~ ^{debris} as those characteristics relate to the
9 efficacy of various removal methods, including, but not limited
10 to, "open bucket" dredging and vacuum dredging, the necessity
11 and utility of silt curtains, or other protective measures, and
12 of various disposal methods including, but not limited to,
13 landfilling.

14 C. No later than ninety (90) days after entry of the
15 Consent Decree, defendants shall evaluate various methods of
16 removal and disposal to determine both the efficacy and probable
17 costs. Not later than one hundred and twenty (120) days after
18 entry of the Consent Decree, defendants shall identify the
19 methods to be employed and shall prepare and submit to EPA and
20 Ecology a removal and disposal plan which reflects the findings
21 of the foregoing evaluations. The plan shall identify all
22 necessary permits or approvals needed to commence the work and
23 shall include a detailed time schedule for completion.
24 Sufficient copies of the plan shall be provided to allow
25 distribution to all federal, state, and local agencies from which
26 permits or other such authorizations must be obtained.

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1 D. Not later than thirty (30) days after approval of the
2 plan by EPA and Ecology, defendants shall submit complete
3 applications for any necessary permits (e.g., CWA Section 404
4 Dredge and Fill permits, Washington Department of Fisheries
5 Hydraulic Improvement permits, shoreline management permits,
6 county/local disposal permits, etc.).

7 E. Not later than May 1, 1988, defendants shall initiate
8 the approved plan of removal and disposal.

9 F. Not later than November 1, 1988, defendants shall
10 complete all activities in the approved plan.

11 G. Not later than January 1, 1989, defendants shall
12 conduct a survey of both sites to assure not less than ninety
13 percent (90%) removal of the ~~waste materials~~^{debris}. A full report on
14 the removal and disposal of the ~~waste materials~~^{debris}, including the
15 results of this survey, shall be provided to EPA and Ecology not
16 later than January 15, 1989. All reports, plans, approvals,
17 disapprovals, and other documents to be submitted pursuant to
18 this Decree shall be sent to designated Project Coordinators.
19 EPA, Ecology, and defendants shall each designate one Project
20 Coordinator and shall inform the other parties of that
21 designation. All communications and correspondence concerning
22 the activities performed pursuant to this Consent Decree shall be
23 directed through the Project Coordinators.
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V

STIPULATED PENALTIES

Defendants agree to pay a stipulated penalty of: (1) Five Hundred Dollars (\$500) for each day of delay in meeting the dates specified in subparagraphs IV.A, B, C, and D, above; ~~Two Thousand Dollars (\$2,000) for each delay in meeting the dates specified in~~ subparagraphs IV.E and F; and ~~Five Thousand Dollars (\$5,000) for each day in which an unpermitted discharge of pollutants enters~~ the Duwamish River or Lake Union from defendants' Fox Avenue or Duwamish facilities. Stipulated penalties shall be paid by cashier's or certified check made payable to the Treasurer of the United States of America and delivered to the Office of the United States Attorney for the Western District of Washington.

VI

ACCESS

Until the termination of this Consent Decree, EPA and Ecology shall have access during normal working hours to the defendants' Fox Avenue and Lake Union facilities for the purpose of inspecting any operations covered by the terms of this Consent Decree.

VII

FORCE MAJEURE

If any event occurs which causes delay in the achievement of the requirements of this Consent Decree, defendants shall

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1 promptly notify the EPA and Ecology, the Project Coordinators
2 orally and shall, within seven (7) days of such oral
3 notification, notify EPA and the state in writing of the
4 anticipated length and cause of the delay, the measures taken and
5 to be taken by defendants to prevent and minimize the delay, and
6 the timetable by which defendants intend to implement these
7 measures. If defendants demonstrate that the delay or
8 anticipated delay has been or will be caused by circumstances
9 beyond their control and despite their due diligence, the time
10 for performance hereunder shall be excused or extended for a
11 period equal to the delay resulting from such circumstances.
12 However, neither increased costs for performance of the terms and
13 conditions of this Decree nor changed economic circumstances may
14 be considered circumstances beyond defendant's control.
15 Defendants' failure to supply the information required above
16 within seven (7) days of the oral notification shall constitute a
17 waiver of such claim.
18

19 VIII

20 DISPUTE RESOLUTION

21 Any dispute may be submitted by a party to the Court for
22 resolution. Stipulated penalties accruing during the pendency of
23 any court procedure shall be payable unless the defendants
24 prevail.
25
26

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IX

COMPLIANCE WITH ALL LAWS

Notwithstanding the provisions of this Partial Consent Decree, defendants shall comply with all applicable Federal and State laws and regulations. EPA and WDOE retain full enforcement authority, including the right to seek penalties for past or future violations of Federal or State law or regulations.

X

TERMINATION

If the defendants obtain an NPDES permit from Ecology, the provisions of this Consent shall cease when the removal and disposal activities are completed, EPA and Ecology approve the work and the final report, and any accrued penalties have been paid. The defendants shall obtain such approval from EPA and Ecology and submit it to the Court. In the event that Ecology denies an NPDES permit for any particular discharge of pollutants from a point source, that discharge shall cease upon permit denial, notwithstanding any provision of this Consent Decree.

XI

CONDITIONAL CONSENT OF THE UNITED STATES

Pursuant to Department of Justice policy at 28 C.F.R. § 50.7, the United States reserves the right to withdraw its consent to the proposed judgment if public comments indicate that the proposed judgment is inappropriate, improper, or inadequate.

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XII

RELEASE

Upon completion of the work specified in Paragraph IV, the United States and Ecology release the defendants from any civil liability arising from allegations made in the Complaint.

XIII

RETENTION OF JURISDICTION

This Court shall retain jurisdiction over this matter for the purpose of enabling any party to this Decree to apply to the Court for such orders as may be necessary or appropriate to interpret, implement or enforce the terms of this Decree, or for any further relief that the interests of justice may require.

FOR THE UNITED STATES OF AMERICA

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FOR MARINE POWER AND EQUIPMENT
COMPANY, INC., AND WFI INDUSTRIES, INC.

RICHARD WOECK, President
Marine Power and Equipment Company, Inc.
and WFI Industries Inc.

DATED and entered this ____ day of _____, 1987.

UNITED STATES DISTRICT JUDGE